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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

AMIR MOSTAFAVI,

Plaintiff and Appellant,

v.

JOSE SERRATOS and MIGUEL
HERNANDEZ,

Defendants and Respondents.

B285638

Los Angeles County
Super. Ct. No. BC582889

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Affirmed.

Mostafavi Law Group and Amir Mostafavi for Plaintiff and Appellant.

Kingsley & Kingsley, Eric B. Kingsley and Ari J. Stiller for Defendants and Respondents.

INTRODUCTION

Plaintiff Amir Mostafavi, an attorney, appeals from a judgment entered after the trial court confirmed a binding arbitration award against him in a dispute over the amount of attorney's fees and costs he charged his former clients, defendants Jose Serratos and Miguel Hernandez (collectively, defendants). On appeal, Mostafavi challenges only the court's order compelling arbitration, arguing he did not agree to arbitrate any dispute over fees and costs attributable to his defense of cross-claims filed against defendants. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. Defendants Retain Mostafavi

In May 2011, defendants retained Gregory Douglas of Douglas Phung, LLP (Douglas Phung) to pursue wage-and-hour claims against their former employer. In April 2012, Douglas Phung sued defendants' former employer. In July 2012, defendants' former employer filed a cross-complaint against defendants in the same lawsuit.

On September 5, 2012, defendants signed a new fee agreement with Douglas Phung, retaining the firm to represent them against their former employer's cross-claims (Cross-Complaint Retainer Agreement). That retainer agreement included an arbitration provision requiring the parties to submit to binding arbitration any dispute over the amount of attorney's fees and costs incurred in defending against the cross-claims. Pursuant to the terms of the Cross-Complaint Retainer

Agreement, Douglas Phung hired Mostafavi at a rate of \$450 per hour to help defend against the cross-claims.¹

On September 5, 2012, defendants also signed a document entitled “Assignment of Rights” (Assignment). The Assignment required defendants to “sell and assign” to Mostafavi and Douglas Phung any settlement or judgment defendants recovered in their lawsuit against their former employer “in consideration of” any legal services Mostafavi and Douglas Phung performed on defendants’ behalf.

On September 5, 2012, defendants signed a third agreement, a “Guarantee Agreement” (Guarantee), which states defendants retained Mostafavi and Douglas Phung on “August 23, 2012” to “represent them in cross-complaint action.” The Guarantee states that defendants agreed to pay Mostafavi and Douglas Phung “all sums due for attorney fees, expenses and costs” related to any work Mostafavi and Douglas Phung performed defending against defendants’ former employer’s cross-claims. Although both the Assignment and the Guarantee were signed on September 5, 2012, they both state they were “effective as of,” or “made on,” August 23, 2012. As for the Cross-Complaint Retainer Agreement, it was effective as of the date Douglas Phung and Mostafavi first performed legal services.

In February 2013, Douglas Phung withdrew from defendants’ case and Mostafavi substituted in as defendants’ counsel of record. On March 28, 2013, Mostafavi drafted an “Attorney-Client Retainer Agreement,” through which defendants agreed to retain him to prosecute the claims defendants brought

¹ Mostafavi did not sign the Cross-Complaint Retainer Agreement.

against their former employer (Complaint Retainer Agreement).² Defendants signed the Complaint Retainer Agreement in April and May 2013.³

The Complaint Retainer Agreement states that it “does not include defending ... against, or representing [defendants] in any claims that may be asserted against [them] as a cross-claim or counter-claim[.]” Defendants agreed to pay Mostafavi a \$2,500 advance fee, plus a percentage of any recovery they obtained from their former employer via “trial, arbitration, or settlement,” ranging from 35 to 60 percent of defendants’ recovery, before deducting legal costs, depending on the stage “at which the settlement or judgment is reached.” Defendants also agreed that Mostafavi would receive any attorney’s fees awarded by the court “in addition to the percentage of the sum of the amount awarded [defendants] at trial by the judge or jury.”

The Complaint Retainer Agreement includes an arbitration provision. The first paragraph of the arbitration provision requires the parties to submit to binding arbitration before a mutually agreed upon arbitrator any dispute concerning “the construction, application or performance of any services under [the Complaint Retainer Agreement], and any claim arising out of or relating to [the Complaint Retainer Agreement] or its breach,” including, among other claims, “disputes regarding attorney fees and/or costs charged under [the Complaint Retainer

² Mostafavi gave defendants, who primarily speak Spanish and have “limited English skills,” copies of that retainer agreement that were written in English only, and he asked another client of his to translate the agreements into Spanish for them.

³ Three other individuals who are not a party to this appeal also signed the Complaint Retainer Agreement.

Agreement]” The second paragraph of the arbitration provision gives defendants the right to elect, in lieu of the binding arbitration described in the first paragraph, non-binding arbitration “pursuant to the fee arbitration procedures as set forth in the California Business and Professions Code Sections 6200-6206” for “any dispute over attorney’s fees, costs or both subject to the jurisdiction of the State of California over attorney’s fees, charges, costs or expenses.” The second paragraph of the arbitration provision also provides, “If either party rejects a non-binding fee arbitration award by timely submission of a request for trial de novo, [Mostafavi, Serratos, and Hernandez] agree that in lieu of a trial de novo in court, the trial after arbitration shall be binding arbitration pursuant to the provisions of paragraph 1, above.”

When they signed the Complaint Retainer Agreement, defendants also signed an “Amendment to Assignment of Rights Dated September 5, 2012” (Assignment Amendment) and an “Amendment to Guarantee Agreement Dated September 5, 2012” (Guarantee Amendment).⁴ Like the original Assignment and Guarantee, the Assignment Amendment and the Guarantee Amendment state that they were “effective as of,” or “made on,” August 23, 2012.

⁴ It appears Mostafavi provided defendants the Complaint Retainer Agreement, the Guarantee Amendment, and the Assignment Amendment as a single, 13-page document. The pages are numbered sequentially, with the Complaint Retainer Agreement spanning pages 1 through 10, the Assignment Amendment appearing on page 11, the Guarantee Amendment appearing on page 12, and a “Disclosure and Consent to Joint Representation” appearing on page 13.

Relevant here, the Guarantee Amendment states that “[o]n August 23, 2012, [defendants] retained [Mostafavi] to represent them in cross-complaint action[.]” The Guarantee Amendment does not reference Douglas Phung, however, and it includes a provision that was not part of the original Guarantee, which states defendants had agreed to pay Mostafavi the greater of an “[a]dditional 20% of [defendants’] gross recovery amount, or [¶] **\$450 per hour** for legal services, [plus] all sums necessary for costs and expenses” incurred for any work he performed related to defendants’ former employer’s cross-claims.⁵ Mostafavi did not have defendants sign a new retainer agreement governing any work he would perform defending against their former employer’s cross-claims.

2. The Parties’ Fee Dispute

Shortly before trial, Mostafavi associated in Eric Kingsley of Kingsley & Kingsley, APC (Kingsley & Kingsley) to help prepare for trial. Before trial was scheduled to begin, defendants and their former employer settled the lawsuit “[a]s a result of ... Kingsley’s involvement in the case.” Defendants each recovered \$135,000 as part of their settlement.

After defendants and their former employer settled their dispute, Mostafavi claimed he was entitled to attorney’s fees and costs totaling around \$94,000 as to each defendant, or about 70 percent of each defendant’s recovery from the settlement. Around

⁵ Mostafavi does not explain how defendants “agreed to pay” him an additional 20 percent of any recovery they obtained from their employer or attorney’s fees at the rate of \$450 per hour fees as of “August 23, 2012,” when none of the documents previously signed by defendants include any such agreement.

March 2014, defendants retained Kingsley & Kingsley to represent them in a dispute over the amount of fees and costs Mostafavi had charged them.

On March 25, 2014, defendants sent Mostafavi a letter requesting that he agree to submit their fee dispute to arbitration. On April 4, 2014, Mostafavi agreed to arbitrate the fee dispute “pursuant to terms stated in the fee agreement executed between [defendants] and [Mostafavi’s] office.”

In April 2015, defendants and Mostafavi arbitrated their dispute before the Beverly Hills Bar Association. A three-member panel issued a non-binding decision in favor of defendants, finding the amount of attorney’s fees and costs Mostafavi had charged them was “grossly excessive.” The panel found Mostafavi was entitled to charge each defendant a maximum of \$64,719.85 as “allowable fees and costs,” or about 48 percent of each defendant’s settlement recovery.

3. Mostafavi’s Lawsuits and Binding Arbitration

Around May 2015, Mostafavi filed two lawsuits against defendants in the Los Angeles Superior Court—Case Number BC582889 and Case Number BC598006—both of which sought “judicia[l] review of an arbitration award in a mandatory fee dispute[.]” According to Mostafavi, he filed Case Number BC582889 to enforce the Guarantee Amendment, and he brought Case Number BC598006 to enforce the Complaint Retainer Agreement.⁶ The court related both actions.

⁶ The appellant’s appendix, which Mostafavi prepared, contains only a copy of the complaint he filed in Case Number BC582889.

In Case Number BC582889, Mostafavi alleged six causes of action against defendants, including claims for “Breach of Contracts,” “Fraud or Deceit,” and “Declaratory Relief.” Mostafavi claimed defendants had violated the terms of the Guarantee Amendment by refusing to pay him, in addition to the attorney’s fees and costs he claimed he was entitled to receive under the Complaint Retainer Agreement, the greater of an additional 20 percent of each defendant’s settlement recovery or an hourly fee based on a rate of \$450 per hour for work he performed defending against the former employer’s cross-claims.

Defendants filed a petition to compel arbitration of Mostafavi’s claims in Case Number BC582889.⁷ Defendants argued the parties agreed to submit any dispute over attorney’s fees and costs, including any fees and costs Mostafavi may have incurred defending against defendants’ former employer’s cross-claims, to binding arbitration when they signed the Complaint Retainer Agreement. Mostafavi opposed defendants’ petition, claiming there is no agreement providing for binding arbitration of the parties’ dispute.

On November 2, 2015, the trial court granted defendants’ petition, finding Mostafavi’s claims in Case Number BC582889 fell within the scope of the arbitration provision included in the Complaint Retainer Agreement. The court stayed the case pending resolution of arbitration.

In March 2017, the parties participated in a binding arbitration hearing before former Los Angeles Superior Court

⁷ Although Mostafavi has not included a copy of the petition in the appellant’s appendix, defendants also filed a petition to compel arbitration of Mostafavi’s claims in Case Number BC598006, which the court granted.

Judge Enrique Romero. In June 2017, Judge Romero issued a written “Final Arbitration Award” in favor of defendants. Judge Romero found the amount of fees and costs Mostafavi charged defendants was “unreasonable” and that Mostafavi had failed to fully advise defendants “that [they] were agreeing by way of two separate agreements to give [Mostafavi] 65% of all recovery in addition to the costs that they were supposed to pay out of any recovery in the underlying litigation.” Judge Romero found “an award of 45% as to each [defendant] for the prosecution of their cases and the defenses of the cross complaint is ‘fair [and] reasonable’ under the circumstances.”

In July 2017, defendants filed a petition in Case Number BC598006, asking the trial court to confirm Judge Romero’s June 2017 arbitration award. Mostafavi argued the court should vacate the award and deny defendants’ petition because, among other reasons, the court erred in compelling arbitration of the parties’ dispute because “[d]efendants failed to meet their burden [of] establishing a valid arbitration agreement[.]”

In August 2017, the court granted defendants’ petition and confirmed the June 2017 arbitration award. In its written ruling, the court rejected Mostafavi’s argument that the court had erred in compelling arbitration as an “[un]timely motion for reconsideration” of the court’s order compelling arbitration.

In September 2017, the court entered judgment in defendants’ favor in Case Number BC598006.⁸ Mostafavi filed a timely notice of appeal from that judgment.

⁸ Nothing in the appellant’s appendix shows the court entered judgment in Case Number BC582889.

DISCUSSION

On appeal, Mostafavi argues the court erred in compelling arbitration because he never agreed to binding arbitration of any dispute over the amount of attorney's fees and costs he charged defendants for work he performed defending against their former employer's cross-claims. Although we conclude the parties agreed to arbitrate their dispute for work related to the cross-claims, we reach that conclusion for different reasons than those relied on by the trial court.

A party may petition the superior court for an order compelling the parties to arbitrate their dispute pursuant to an arbitration agreement under Code of Civil Procedure section 1281.2. To determine whether the parties' dispute falls within the scope of an arbitration agreement, we apply general principles of California contract law. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.) We try to give effect to the parties' intentions by looking to the usual and ordinary meaning of the contractual language and the circumstances under which the contract was formed. (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1063.)

California has a strong policy favoring arbitration of disputes. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 397.) Thus, “ “arbitration should be upheld unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute.” ’ [Citation.]” (*Ibid.*) Accordingly, we resolve any reasonable doubt as to whether a claim falls within the arbitration clause in favor of arbitration. (*Coast Plaza Doctors Hops. v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 687.) We also resolve any ambiguities as to the scope of the arbitration provision against the party who drafted

the agreement. (*Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 247–248 (*Sandquist*).)

“‘[We] examine only the agreement itself and the complaint filed by the party refusing arbitration’ [Citation.] Because the trial court sits as a trier of fact in ruling on such a petition, its decision on the existence of a valid arbitration agreement will be affirmed on appeal if substantial evidence supports the ruling.” (*Rice v. Downs* (2016) 247 Cal.App.4th 1213, 1223.) But if “‘there is no “*factual* dispute as to the language of [the] agreement” [citation] or “conflicting extrinsic evidence” regarding the terms of the contract [citation], our standard of review of a trial court order granting or denying a motion to compel arbitration under [Code of Civil Procedure] section 1281.2 is *de novo*.’ [Citation.] ‘We are not bound by the trial court’s construction or interpretation.’ [Citation.]” (*Ibid.*)

When it granted defendants’ petition to compel arbitration, the court found the arbitration provision included in the Complaint Retainer Agreement required Mostafavi to arbitrate any dispute over the amount of attorney’s fees and costs he charged defendants, including for any work he performed defending against their former employer’s cross-claims. The Complaint Retainer Agreement is expressly limited, however, to the work Mostafavi agreed to perform prosecuting the claims defendants brought against their former employer, as it states that it “does not include defending [defendants] against, or representing [defendants] in any claims that may be asserted against [them]” in their lawsuit against their former employer. Moreover, the first paragraph of the arbitration provision states that it applies to any dispute over the “the construction, application or performance of any services *under this Agreement*

... and [any dispute] regarding attorney[’s] *fees and/or costs charged under this Agreement[.]*” (Italics added.) The arbitration provision in the Complaint Retainer Agreement therefore does not encompass a dispute between defendants and Mostafavi over the amount of attorney’s fees and costs Mostafavi charged for work performed defending against defendants’ former employer’s cross-claims. Nevertheless, we conclude Mostafavi agreed to arbitrate fee disputes involving work performed by him related to the cross-claims because he executed the Guarantee Amendment and is a third-party beneficiary of the Cross-Complaint Retainer Agreement.

At the time the parties executed the Complaint Retainer Agreement, the Assignment Amendment, and the Guarantee Amendment, Mostafavi did not ask defendants to sign a separate retainer agreement defining the terms of his work related to defendants’ former employer’s cross-claims. Mostafavi intended to continue to represent defendants with respect to those cross-claims, though, since he asked defendants to sign the Guarantee Amendment ensuring he would receive payment for any work he performed related to the cross-claims, and he has never disputed that he continued to represent defendants with respect to those cross-claims after they signed the Complaint Retainer Agreement and the Guarantee Amendment.

To be clear, the Guarantee Amendment is not a typical retainer agreement. Rather, the Guarantee Amendment only memorializes a *prior retainer agreement* between defendants and Mostafavi. In fact, the Guarantee Amendment explicitly acknowledges defendants had already retained Mostafavi on August 23, 2012, or more than six months before the Guarantee Amendment was executed, “to represent them in the cross-

complaint action,” and it does not include many of the terms an attorney must include in a contingency fee agreement. (See Bus. & Prof. Code, § 6147 [listing the necessary terms for a contingency fee agreement].)

The only agreement that authorizes Mostafavi to represent defendants with respect to their former employer’s cross-claims is the Cross-Complaint Retainer Agreement. As we noted earlier, Douglas Phung hired Mostafavi to help defend against the cross-claims brought by defendants’ former employer under the terms of the Cross-Complaint Retainer Agreement. That agreement includes an arbitration provision requiring the parties to submit to binding arbitration any dispute over attorney’s fees and costs for work related to defendants’ former employer’s cross-claims.

Although Mostafavi did not sign the Cross-Complaint Retainer Agreement, he is bound by its arbitration provision. Under California Law, a nonsignatory can be compelled to arbitrate if “a benefit was conferred on the nonsignatory as a result of the contract, making the nonsignatory a third party beneficiary of the arbitration agreement” or if “‘a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim.’ [Citation.]” (*Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 599–600.)

Here, Mostafavi clearly benefitted from the Cross-Complaint Retainer Agreement, since he is named in the agreement and was hired to represent defendants with respect to their former employer’s cross-claims under the terms of that agreement. It is also clear that Mostafavi intended to continue to benefit from the Cross-Complaint Retainer Agreement, since he

executed the Guarantee Amendment, which seeks to ensure payment for any work he performed under the terms of that retainer agreement. Further, to the extent there is any ambiguity as to whether the Guarantee Amendment was intended to incorporate the Cross-Complaint Retainer Agreement's arbitration provision, we must interpret that ambiguity in defendants' favor—i.e., in favor of requiring arbitration—since Mostofavi drafted the Guarantee Amendment. (See Civ. Code, § 1654 [“the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist”]; *Sandquist, supra*, 1 Cal.5th at p. 247 [“ambiguities in written agreements are to be construed against their drafters”].)

Because Mostafavi is a third-party beneficiary of the Cross-Complaint Retainer Agreement, and because that agreement requires binding arbitration of any dispute over attorney's fees and costs incurred in representing defendants with respect to their former employer's cross-claims, the trial court did not err when it granted defendants' petition to compel arbitration.

DISPOSITION

The judgment is affirmed. Serratos and Hernandez are awarded their costs on appeal.⁹

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.

⁹ We decline, however, to award attorney's fees on appeal under Business and Professions Code section 6203, subdivision (c).